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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 DEC 10 P 1: 58

Arizona Corporation Commission

AZ CORP COMMISSION
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DEC 10 2009

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In the matter of:

SIR MORTGAGE & FINANCE OF
ARIZONA, INC., an Arizona corporation,

GREGORY M. SIR (a/k/a "GREG SIR"), and
ERIN M. SIR, husband and wife,

Respondents.

DOCKET NO. S-20703A-09-0461

**SECURITIES DIVISION MOTION FOR
RECONSIDERATION OF THE PORTION
OF THE THIRD PROCEDURAL ORDER
DEALING WITH RESPONDENTS' FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") requests the Administrative Law Judge ("ALJ") to reconsider and clarify the comments and ruling set forth in the December 2, 2009 Third Procedural Order ("Order") regarding "Respondents' First Request for Production of Documents ("Request").

1. Introduction.

On November 6, 2009, Respondents' filed a thirteen-page Request demanding that the Division provide to them documents and information identified in fifty-six detailed paragraphs titled "Documents To Be Produced," many of which include subcategories.

The Request was not supported by an application demonstrating that they have a "reasonable need" to obtain any discovery from the Division. *See*, R-3-109(O)(applicable Rule of Practice and Procedure Before The Commission requiring that requests for discovery be supported by an "application"); R14-3-106(F)(applicable Rule stating that the application "shall" contain the facts upon which the application is based, with such exhibits as may be required or deemed appropriate by the application" to justify the discovery request); A.R.S. § 41-

1 1062(A)(4)(applicable “*Administrative Procedures Act*” rule requiring that an applicant for
2 discovery demonstrate a “reasonable need” for the information sought).

3 Because the Arizona Rules of Civil Procedure do not apply to the Request and the ALJ
4 has not found that respondents have demonstrated a “reasonable need” to obtain documents and
5 information as required by A.R.S. § 41-1062, the ALJ should reconsider its denial of the
6 Division’s Motion to Quash as set forth in the Order.

7 **2. Motion for Reconsideration and Clarification.**

8 **A. There was no showing by respondents of “reasonable need” for the**
9 **discovery.**

10 What respondents ignored, and the ALJ did not find, was that before any discovery can be
11 allowed, respondents needed to show that they had a reasonable need for it.

12 Respondents had argued that “[t]he [Commission] Procedural Rules expressly incorporate
13 the Arizona Rules of Civil Procedure, including those rules governing discovery.” (Response,
14 p.2:8-9). They do not. Rather, R14-3-101 states:

15 In all cases in which procedure is set forth **neither by law, nor by these rules, nor**
16 **by regulations or orders of the Commission**, the rules of Civil Procedure for the
17 Superior Court of Arizona as established by the Supreme Court of the state of
18 Arizona shall govern.” (emphasis added).

19 The plain language of R14-3-101 identifies the hierarchal set of authority to be consulted on a step-
20 by-step basis, and applied in evaluating the Request.

21 First, the ALJ should determine whether there are any “laws” applicable to the Request.
22 There are, to wit, the statutes of the Arizona *Administrative Procedures Act*, A.R.S. § 41-1061 et
23 seq. (“APA”). This case is an “administrative” proceeding. Thus, the “laws” of the APA apply.
24 As set forth in the Division’s Motion to Quash, A.R.S. § 41-1062(A)(4) of the APA requires
25 respondents to demonstrate that they have a “reasonable need” to obtain the voluminous amounts
26 of information identified in their Request.

Second, the ALJ should determine whether there are any rules applicable to the Request.
There are, to wit, R14-3-109(O) of the Rules of Practice and Procedure Before the Commission.

1 Because this case is an “administrative” proceeding brought before the Commission, the Rules of
2 Practice and Procedure Before the Commission are applicable. As noted in the Division’s
3 Motion to Quash, R14-3-109(O) requires that requests for discovery be supported by an
4 application, and R14-3-106(F) states that that an application “shall contain the facts upon which
5 the application is based, with such exhibits as may be required or deemed appropriate by the
6 applicant.”

7 Third, R14-3-101 permits the ALJ to also look to “decisions” of the Commission for
8 guidance. However, the procedural orders and decisions that recite the contents of procedural
9 orders cited by respondents in their Response only govern the discovery procedures applicable to
10 those cases.¹ Further, the Commission orders to which R14-3-101 refer are those general orders
11 that establish a procedure that control in all cases. To undersigned counsel’s knowledge, no such
12 all encompassing orders exist.

13 Applied here, while the Order denies the Division’s Motion to Quash, the only finding
14 therein relating to the Request is that it is, in fact, “broad and burdensome.” The Order does not
15 include a finding that respondents have demonstrated a “reasonable need” to obtain any discovery
16 from the Division under the unique facts and circumstances of this case. Thus, for the reasons
17 discussed above, the Division moves the ALJ to reconsider and/or clarify its Order as it relates to
18 the Request and the denial of the Motion to Quash.

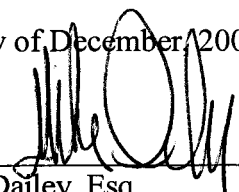
19 **3. Conclusion.**

20 Because the Arizona Rules of Civil Procedure are not applicable to the overly broad and
21 unduly burdensome Request that also improperly conflicts with the confidentiality mandate of
22 A.R.S. § 44-2042 of the Arizona Securities Act, and respondents’ have failed to demonstrate a
23 reasonable need to obtain any discovery from the Division beyond that relating to the exchange
24

25 ¹ What constitutes “reasonable need” to obtain discovery should be decided on a case-by-case basis. Respondents
26 failed to demonstrate how the facts and circumstances of the procedural orders and decisions reciting procedural orders
issued in the eight cases cited in their Response are analogous to this case. For instance, and although respondents
cited the Hockensmith matter, there apparently were documents at issue in that case that in fact those respondents
could not have obtained anywhere else. That is not the case here.

of the parties' lists of witnesses and exhibits, the Division moves the ALJ to reconsider its denial of the Division's Motion to Quash.

RESPECTFULLY SUBMITTED this 10th day of December, 2009.


Mike Dailey, Esq.
Staff Attorney
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007

**ORIGINAL AND THIRTEEN (13) COPIES
of the foregoing filed this 10th day of
December, 2009 with:**

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

**Copy of the foregoing hand-delivered this 10th day of
December, 2009 to:**

Marc E. Stern, Administrative Law Judge
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, Arizona 85007

**Copy of the foregoing mailed this 10th day of
December, 2009 to:**

Paul Roshka, Esq.
Tim Sabo, Esq.
Roshka DeWulf & Patten
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004
Attorneys for Respondents

